IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRP.No. 750 of 2007()

AGAINST THE ORDER DATED 26/06/2007 IN EP. 366 /2005 IN OS.724/1990 of II ADDL.SUB COURT,THRISSUR

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REVN. PETITIONER: RESPONDENT/JUDGMENT DEBTOR/DEFENDANT:

VIJAYAN, S/O. MANALIL CHERU,
PUTHUVATTOOR DESOM, GURUVAYOOR AMSOM,
CHAVAKKAD TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: RESPONDENT/DECREE HOLDER/PLAINTIFF:

ANAND, S/O. KAKKASSERY JOHN,
MAMMIYOOR DESOM, GURUVAYOOR AMSOM, CHAVAKKAD TALUK

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No. 750 OF 2007

Dated this the 14th August, 2007.

O R D E R

This revision is preferred against the order of the Subordinate Judge, Thrissur in E.P.366/05 in O.S.724/90. The court, after having found that there is means for the judgment debtor and that he is evading payment has ordered arrest and it is that order which is under challenge. I had gone through the order carefully and had also considered the arguments submitted by the learned counsel for the revision petitioner. Learned counsel for the revision petitioner would submit that so far as means is concerned, his client is in a very poor situation and it is a fact that he was running a studio but unfortunately eviction is also staring at him and therefore he is not having any funds to pay. It is also submitted by him that he is getting hardly Rs.1,000/- as a director of the Kury company and further the lands which is proposed to be with him is also under the threat of sale for the loan taken from the Service Co-operative Bank. The evidence of R.Ws.1 and 2 and P.W.1 has been analysed in the back drop of the documents produced by the parties. At least the revision petitioner admits that he is having a studio. It is also admitted by him that he is having three employees but his

version that he has to depend on others to pay the professional tax itself shows to what extent he will go in deposing his truth. Further, it has also to be stated that he admits about the sale of video cassettes but would contend that it was done by his friends. One cannot believe that factor also. Further his contention that though he is a director he is only getting a paltry amount, is also not quite believable. Therefore on the preponderance of probabilities the court below has decided to accept the evidence of P.W.1 especially in the light of A.W.1 which throws light on the factum of employment, the income etc of the judgment debtor. Therefore, I do not find any merit in the C.R.P and therefore it is to be dismissed. Learned counsel for the revision petitioner submits that considering the pathetic situation of his client now, if sufficient time is given he will try his level best to pay the amount so that he need not have to undergo imprisonment. I am inclined to grant some time to the revision petitioner to wipe off the liability. Therefore the C.R.P is disposed of confirming the order on the finding of means but the court below is directed to defer the execution of the warrant on the following conditions:-

i) The revision petitioner shall make a payment of

Rs.30,000/- to the decree holder on or before 20.9.2007.

ii) He shall make the balance payment in five monthly equal instalments commencing from 20.10.2007.

iii) If the revision petitioner commits default of payment of Rs.30,000/- within the stipulated time or default of two consecutive instalments the benefit conferred upon him shall stand forfeited and the decree holder will be at liberty to proceed against him for arrest and detention in civil prison. In order to enable the revision petitioner to comply with these directions the order of arrest shall stand deferred for the time being.

M.N.KRISHNAN
Judge

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